

**LANGABEER,  
TULL & LEE, P.S.**  
*Attorneys at Law*

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SENT VIA FAX AND REGULAR US MAIL

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NOV 14 2002

DEPT. OF ECOLOGY  
BELLINGHAM FIELD OFFICE

September 19, 2002

Nnamdi Madakor, Site Manager  
Department of Ecology  
300 Desmond Drive  
Lacey, WA 98504-7600

**Re: Holly Street Landfill Site**

Dear Mr. Madakor:

As you may be aware, I represent Northwest Recycling, Inc., and the Parberry family interest in connection with the "Holly Street Landfill Cleanup."

I have reviewed the proposed Clean Up Action Plan and Consent Decree with the goal of submitting preliminary comments. I have also met and discussed these matters briefly with City officials and with my clients.

I suspect it will be necessary for me to review some of these items with you and at the appropriate juncture with the Department of Ecology's attorneys'. Please contact me when you have had a chance to review this letter so that we can determine how to most efficiently proceed.

These comments are not in order of significance.

1. The research we have done in the past makes it clear that the Holly Street landfill was officially a City solid waste landfill for many years. Various recitations in the document obscure this fact. This is very much a community issue.
2. Consideration should be given, if possible, to differing treatments of parcels with differing conditions. This could pertain to both the Consent Decree and the Restrictive Covenant contemplated thereby.

3. We seek verification that no action will be required of my clients in connection with their properties, unless and until, they undertake some site or facility change.

4. I am not clear as to whether the acknowledgement of Defendants in the middle of Paragraph A in Section VI is intended to apply to my clients. If it does, then we need to discuss this point, as this language appears overly broad. This acknowledgement sentence appears to be inconsistent with the recital in Paragraph E in Section I. Note in Section VII that the actions contemplated in Paragraphs A, B and C refer to the City whereas Paragraph D utilizes the term Defendants.

5. Section X does not seem to distinguish appropriately between the City and other owners.

6. Paragraph G of Section VI raises a question related to point 3, as far as I can tell, the actions required in the Cleanup Action Plan, Sections 4.1 and 4.2, would not require present action by my clients, except in connection with the Restrictive Covenant recordation. What is the best way to confirm the implementation limitations?

7. With respect to Section XIV, I request further explanation of this particular requirement. This language seems overly broad and could unnecessarily interfere with the rights of private owners. The term "transfer any legal or equitable interest" probably includes even involuntary transfers. A similar question exists with respect to Paragraph A. Would it be simplest if I addressed these comments to Steve Thiele? Would it be possible to receive clarification as to which parcels are affected by Paragraph B of Section XV?

8. Section XX seems applicable to the City but certainly less applicable to other property owners.

9. Section XXIII by its nature clearly deals with the City of Bellingham. This underscores the early expression of concern regarding joint and severable liability. It is possible that the final proviso of Section XXIII is intended to address my concern. Some clarification would be appreciated.

10. Sections XXVII through XVIII may require further discussion if we are unable to more carefully distinguish some Defendants from the City. Also it was my understanding, and I may be just confused at this point, that participation in the Consent Decree would produce a bar for any Defendant pursuing any other.

11. With respect to Exhibit D the Restrictive Covenant, might we suggest that the sweeping reference to hazardous substances on the top of Page 2 be revised. This creates the impression that, for example, carcinogens are thought to exist in dangerous levels

Nnamdi Madakor, Site Manager  
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beneath my clients' properties. We do not believe that to be the case. Simply striking the list of substances listed after the reference to WAC 173-340-740 would reduce my concerns.

12. In Section 1 of the Restrictive Covenant at Page 3 there is a reference to Shoreline Management regulations. This might not apply to many of the private parcels. Also the reference to "ground floor residential" might benefit from some more discussion.

13. With respect to Section 2, would it be possible to distinguish, in the form of Restrictive Covenant, between among the various parcels. I believe that only the City owns structures within the Maritime Heritage Park portion of the site and therefore it might not be necessary to refer to these venting systems in the covenants recorded elsewhere. Please correct me if I misunderstand.

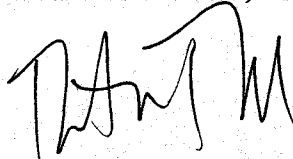
14. Section 4 visits the issue previously mentioned regarding notice of proposed conveyancing. What does Ecology do when it receives notice of pending conveyance?

15. In Section 5 if an owner has existing leases in place that do not involve tenant changes to structures or the site then why would it be necessary to notify current leasees?

16. The notice provisions in Section 7 seem a bit vague and open ended.

Thank you for taking the time to review these comments. We look forward to the opportunity to discuss these issues further with you, or if you would prefer, with Steve Thiele. Please let us know the best way to proceed towards a resolution of these matters.

Very truly yours,  
LANGABEER, TULL & LEE, P.S.



Robert M. Tull

RMT: ao  
cc: clients  
Sheila Hardy, City of Bellingham

LANGABEER,  
TULL & LEE, P.S.  
*Attorneys at Law*

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September 19, 2002

Nnamdi Madakor, Site Manager  
Department of Ecology  
300 Desmond Drive  
Lacey, WA 98504-7600

**Re: Holly Street Landfill Site**

Dear Mr. Madakor:

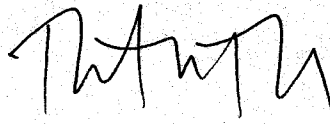
I represent BS&D, LLC and in that regard have reviewed the Holly Street landfill document package.

As you are aware, the City purchased the BS&D, LLC properties at the end of 2001. In recent discussions with Mr. Orem of BS&D, LLC, we discussed the fact that Section V, Paragraph C refers to BS&D, LLC. We are not aware of any particular reason why ongoing reference to BS&D, LLC is relevant in this particular section. As far as we know, there is no intention of having BS&D, LLC enter into this decree. As you may be aware our agreements with the City of Bellingham resolved these matters.

When it is convenient, please let me know how we might proceed. Resolution of this matter should not be difficult.

Thank you in advance for your cooperation.

Very truly yours,  
LANGABEER, TULL & LEE, P.S.



Robert M. Tull

RMT: ao

cc: client  
Sheila Hardy, City of Bellingham



# BOSS TWEED CUSTOM CATERING

400 WEST HOLLY BELLINGHAM, WA. 98225

SEPTEMBER 10 2002

HOLLY STREET LANDFILL SITE  
BELLINGHAM, WASHINGTON.

TO:  
STEVE ALEXANDER  
NORTHWEST REGIONAL OFFICE  
DEPARTMENT OF ECOLOGY  
3190 160TH AVE SE, BELLEVUE, WA. 98008

FROM: JOHN SANDS  
400 WEST HOLLY ST.  
BELLINGHAM, WA. 98225

## PUBLIC COMMENT:

SIR MY PROPERTY BORDERS THE MARITIME HERITAGE PARK. AFTER TALKING TO THE CITY OF BELLINGHAM I WANT TO MAKE SURE THAT MY PROPERTY IS ALL INCLUDED IN THE CONSENT DECREE AND THAT THE ISSUE OF METHANE GASSES AND THE MONITERING OF THEM IS TALKED ABOUT . MY PROPERTY IS INCLUDED IN THE MAP BUT NOT SPELLED OUT EITHER LEGALY OR MENTIONED OTHERWISE.

I WOULD LIKE TO HAVE YOU PUT THIS ON THE LIST OF THINGS TO TALK ABOUT BEFORE ANTHING ELSE HAPPENS.

THANK YOU FOR YOUR TIME,

JOHN SANDS

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BELLINGHAM FIELD OFFICE  
MO

Sheila Hardy and Steve Alexander,

I question the boundaries set for the "Holly Street Landfill" as marked in red by Figure 1 within Exhibit A of the "Draft Documents for Public Review & Comment" for the Holly Street Landfill Site dated August 2002. The 1885, 1904 and 1913 issues of the Sanborn Fire Map for the town of Whatcom/Bellingham reflect a different tideline with structures in place, several of which are still intact today including the Stenger Hotel built circa late 1880s (604-606 W. Holly), Union Block built circa late 1880s (610-618 W. Holly), U.S. Hotel built circa early 1910s (700-706 W. Holly) and the brick Territorial Courthouse built in 1858 (1308 E. Street) between B and E Street adjacent to Holly Street. A more appropriate line should be drawn through the center of each block between Holly and Astor running from B Street to E Street with areas on the Western half of each block not included in this "landfill" area.

Also, on pages 15-16 of the Environmental Checklist, item number 13 inquires about Historic and Cultural Preservation. The Territorial Courthouse on E street is listed on the State Register and the closest National Register site is the Great Northern Railroad Passenger Depot built in 1927 at 1200 D. Street. Several blocks within the "Holly Street Landfill" area as outlined in Figures 1-3 include historic structures that could meet the criteria for the National Register, as this area is a part of the business district of the town of Whatcom which dates back to the 1850s. As the cleanup extends beyond the B Street right of way and adjacent area project, an historical archaeologist should be employed to survey the area and monitor work performed, especially any work on the North side of the creek. I wonder if this area qualifies for Section 106 compliance?

A current landowner, Carl Akers might be a good source to contact as an observer of fill practices employed during the mid to late 1950s and Jeff Jewell, our Photo Archives Research Assistant has done research on early fill practices in this area and may be an asset with information as well.

I appreciate your consideration of the

information provided. Let me know if I can be of assistance in providing copies of maps or photographs that may shed some light on the historical significance of this area.

Sincerely,

Toni L. Nagel, Photo Archivist/Curator of History  
Whatcom Museum of History & Art  
121 Prospect Street, Bellingham, WA 98225  
360-676-6981 ext. 208 phone 360-738-7409 fax  
[www.whatcommuseum.org](http://www.whatcommuseum.org)

Nmamdi Madakor  
Site Manager  
Department of Ecology  
300 Desmond Drive  
Lacey, WA98504-7600

August 29, 2002

Dear Ms. Madakor,

I am writing in response to the recent plans for mitigating problems with the historic Holly Street landfill on Whatcom Creek in Bellingham. Those involved in the archaeological and local history community of the county have long known that the bluff below the post office and Whatcom Museum of History and Art (the old county courthouse) overlooking the now-filled portion of the mouth of Whatcom Creek was the site of much prehistoric and historic activity. Prehistoric shell midden from early Native American activity is visible in the bluff's wall beneath the post office. Shell middens are often sites of ancestral burials, and are sacred sites to present day Native Americans, as was experienced in the debacle at the Blaine sewage treatment plant at Semiamhoo. Historic artifacts are scattered along the bluff from the post office and south of the old county courthouse. These are significant heritage resources in the county. They are information about how our Native and Euro-American ancestors lived their daily lives, and are non-renewable resources. Once disturbed, without documentation of the information contained within the deposits, it is lost to us and to our grandchildren.

State and federal laws are clear and specific: cultural materials over 30 years old (state law), and 50 years old (federal statutes), are considered heritage resources and must be handled in specific ways to be in compliance. The Holly Street landfill is a prime example of such. However, the city of Bellingham and the Nooksack Salmon Enhancement Association are not considering the heritage and cultural resources along Whatcom Creek in accordance with existing statutes and have not adequately addressed them in their important renovation project plans for this very significant area.

Local archaeologists and historians were frustrated as they watched cultural material from the early part of the 20<sup>th</sup> century being revealed by blackberry removal and subsequent construction and planting on the bluff. They became outraged when they learned that stream renovation volunteers collected public heritage resources for their private collections. Currently, City work is digging through prehistoric shell midden and historic materials that date at least to the 1930s on the bluff beneath the post office, still with no mandated cultural resource assessment or documentation having been completed.

New county comprehensive plans are requiring county agencies to take more responsibility for heritage resources than was true in the past. Goal 10E, Whatcom County Comprehensive Plan, states that the county must "recognize Whatcom County's historical and archaeological attributes and identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance". Most of the cities in Whatcom County have begun to comply with this requirement and the specific policies contained within the goal. For example, an engineering firm hired by the



City of Lynden complied by contracting with local archaeological consultants to monitor excavation for new city water tanks. The archaeologists documented an unknown site area, and retrieved artifacts dating back to the 1890s prior to its destruction by excavation. There was no delay of the project, yet non-renewable historical information about Lynden's early history of was recovered and preserved. The City of Bellingham, however, lags behind, and city projects regularly impact known-but-undocumented cultural site areas. Appropriate cultural resource management now involves more than completing a SEPA checklist for public projects, and particularly, when known site areas exist within a project's boundaries.

As a professional archaeologist I ask that any project using public monies proceed in a legal (mandated) and ethical manner regarding our county's heritage resources and include the following: conduct a professional cultural resource assessment of the entire project area to separate oral and anecdotal history from that which is found on the ground; document any site areas encountered; follow any cultural resource recommendations for appropriate cultural resource management.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Hale', written in a cursive style.

James W. Hale

# Holly Street Landfill Comment Form

This is an invitation for comments on the following draft documents: *remedial investigation/feasibility study, consent decree (including exhibits A-G), state environmental policy act checklist and determination of non-significance* for the Holly Street Landfill. Please send your comments by September 20, 2002 to:

Nnamdi Madakor  
Department of Ecology  
300 Desmond Drive  
Lacey, WA 98504-7600

## Name and address optional

Name... Aubrey Stargell  
Address... P.O. Box 7-787  
City... Bellingham WA Zip Code... 98227  
E-mail Address... forestry@guest.net

1. Do you have any comments about the investigation results and proposed cleanup activities described in the documents listed above? If so, please describe.

This project appears to be a waste of taxpayer time/money.

I don't see the urgency for "cleanup".

Money & time would be better spent doing other habitat improvements & such removing fish passage barriers and habitat purchase/acquisition.